

Message

From: Goodin, John [Goodin.John@epa.gov]
Sent: 4/9/2020 1:32:08 PM
To: Ross, David P [ross.davidp@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]
CC: Forsgren, Lee [Forsgren.Lee@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Shimkin, Martha [Shimkin.Martha@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]
Subject: Update on FL...FW: Fotouhi-Reviewed FR notice for ESA/404 Assumption
Attachments: DF_Draft FR notice re assumption and ESA DF Review.docx

DELIBERATIVE

Morning, Dave-- I wanted to send you a quick update on FL's efforts and timing to assume the CWA 404 program—key item at this point is that any EPA comments on their proposed regs will now be due later than next Friday, given that the state plans to hold additional public hearings.

Thanks,
John

FDEP and EPA staff have been continuing to work to help complete portions of FDEP's request package as well as undertake informal consultation under Section 7 of ESA on the program approval. Based upon the ongoing conversations and changing timelines for FL's regs, we do not have draft comments or issues to raise to you at this time. The following is the status of these efforts as well as Florida's timing as we currently understand it:

- EPA comments on FDEP's proposed rule – Currently FL is engaging in public hearings (via webinar due to COVID-19) on their proposed rule. They are granting a request to hold additional hearing(s) and will extend the comment period to include the hearing(s). Date of new hearing(s) is TBD but likely at least several weeks out.
 - FDEP has requested EPA's comments by the close of the comment period which is unknown at this time.
 - EPA staff are reviewing the recent version of the rule and will provide to leadership any formal comments on the rule for your review. We understand that FDEP's consultant and FDOT have requested changes to the rule that FDEP intends to address.
- FDEP's enforcement authorities – Passed by the legislature, the legislation has not yet been sent to the Governor as he is not accepting legislation at the moment; it must be sent by June 2 and he has 15 days to sign or it becomes law.
- ESA Biological Assessment – EPA is awaiting a new draft of the Biological Assessment. When received we plan to brief you and other senior managers on any issues.
- FDEP's public hearings – FDEP said the virtual hearings were going well, support is mixed, and specific comments raised so far included:
 - The 300-foot administrative line for retained adjacent wetlands is arbitrary.
 - State and Federal permit requirement is viewed as a check and balance in the permitting process.
 - Proposed rule does not consider cumulative and secondary impacts in permit – FDEP said that they are addressing.
 - If consulting under ESA, then also need to consult under other acts such as NHPA and NEPA – Tribes are raising NHPA consultation; others are raising NEPA consultation.
 - FDEP is deferring questions unrelated to the rule, but relevant to assumption and EPA's public hearings on program approval – EPA is tracking these, for example, concerns about assuming without additional staffing of funding.

From: Goodin, John
Sent: Thursday, April 02, 2020 6:47 AM
To: Ross, David P <ross.davidp@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>

Cc: Forsgren, Lee <Forsgren.Lee@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>

Subject: Fotouhi-Reviewed FR notice for ESA/404 Assumption

DELIBERATIVE

Dave—attached is the Fotouhi-approved revised draft of the CWA404 state assumption ESA Federal Register Notice for your review and approval (12pp). We can work with Janita et al. to move a signature package if this hits the mark for you.

With respect to Florida, R4, OGC, and OWOW are reviewing their proposed assumption regulations and plan to provide you with draft comments next week if you would like to review them (due to FL 17 April).

Thanks,
John